

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 336

Introduced by Assembly Member Dickinson

February 10, 2011

An act to amend Section 1633.3 of the Civil Code, and to amend Sections 22202 and 22328 of, and to add ~~Section 22343~~ Sections 22328.5 and 22328.6 to, the Financial Code, relating to loans.

LEGISLATIVE COUNSEL'S DIGEST

AB 336, as amended, Dickinson. ~~Consumer~~ Title loans.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation by the Commissioner of Corporations of those engaged in making consumer loans, as defined. ~~The law defined, and makes a willful violation of its provisions a misdemeanor. Existing law places a cap on interest rates for consumer loans of less than \$2,500. With respect to loans secured by a lien on a motor vehicle, existing law requires a licensee to give at least 15 days' written notice of intent to dispose of a repossessed or surrendered motor vehicle to all persons liable on the loan, as specified. Existing law makes those persons liable for any deficiency after the vehicle is repossessed or surrendered if that notice is given within 60 days of repossession or surrender, except as specified.~~

With respect to title loans, as defined, this bill would require a licensee to give at least 30 days' written notice of intent to dispose of a repossessed or surrendered motor vehicle to all persons liable on the loan and would eliminate the liability of those persons when the borrower defaults and the lender disposes of the surrendered or repossessed motor vehicle. The bill would prohibit a licensee from

making a title loan unless the licensee provides certain disclosures to the borrower and underwrites each loan to determine the borrower's ability and willingness to repay the loan, as specified. The bill would also prohibit a licensee from structuring a title loan transaction as if it were a sale-leaseback of the vehicle. The bill would enact other provisions relative to title loans and would make a person who violates these provisions liable for a civil penalty of no more than \$10,000 in addition to any other remedies prescribed by law.

~~This bill would prohibit a licensee from taking the title to a vehicle as security for a consumer loan unless the interest rate for the loan is no greater than 36% and specified disclosures are provided to the consumer.~~

Because a *willful* violation of the bill's provisions would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1633.3 of the Civil Code is amended to
- 2 read:
- 3 1633.3. (a) Except as otherwise provided in subdivisions (b)
- 4 and (c), this title applies to electronic records and electronic
- 5 signatures relating to a transaction.
- 6 (b) This title does not apply to transactions subject to the
- 7 following laws:
- 8 (1) A law governing the creation and execution of wills, codicils,
- 9 or testamentary trusts.
- 10 (2) Division 1 (commencing with Section 1101) of the Uniform
- 11 Commercial Code, except Sections 1107 and 1206.
- 12 (3) Divisions 3 (commencing with Section 3101), 4
- 13 (commencing with Section 4101), 5 (commencing with Section
- 14 5101), 8 (commencing with Section 8101), 9 (commencing with
- 15 Section 9101), and 11 (commencing with Section 11101) of the
- 16 Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Sections 1350 to 1376, inclusive, of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, or Section 3071.5 of, the Civil Code, subdivision (b) of Section 18608 or Section 22328 *or* 22328.5 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7, 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

(d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subdivision (b) when used for a transaction subject to a law other than those specified in subdivision (b).

(e) A transaction subject to this title is also subject to other applicable substantive law.

(f) The exclusion of a transaction from the application of this title under subdivision (b) or (c) shall be construed only to exclude the transaction from the application of this title, but shall not be

1 construed to prohibit the transaction from being conducted by
2 electronic means if the transaction may be conducted by electronic
3 means under any other applicable law.

4 *SEC. 2. Section 22202 of the Financial Code is amended to*
5 *read:*

6 22202. “Charges” do not include any of the following:

7 (a) Commissions received as a licensed insurance agent or
8 broker in connection with insurance written as provided in Section
9 22313.

10 (b) Amounts not in excess of the amounts specified in
11 subdivision (c) of Section 3068 of the Civil Code paid to holders
12 of possessory liens, imposed pursuant to Chapter 6.5 (commencing
13 with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil
14 Code, to release motor vehicles that secure loans subject to this
15 division.

16 (c) Court costs, excluding attorney’s fees, incurred in a suit and
17 recovered against a debtor who defaults on his or her loan.

18 (d) Fees paid to a licensee for the privilege of participating in
19 an open-end credit program, which fees are to cover administrative
20 costs and are imposed upon executing the open-end loan agreement
21 and on annual renewal dates or anniversary dates thereafter.

22 (e) Amounts received by a licensee from a seller, from whom
23 the borrower obtains money, goods, labor, or services on credit,
24 in connection with a transaction under an open-end credit program
25 that are paid or deducted from the loan proceeds paid to the seller
26 at the direction of the borrower and which are an obligation of the
27 seller to the licensee for the privilege of allowing the seller to
28 participate in the licensee’s open-end credit program. Amounts
29 received by a licensee from a seller pursuant to this subdivision
30 may not exceed 6 percent of the loan proceeds paid to the seller
31 at the direction of the borrower.

32 (f) Actual and necessary fees not exceeding five hundred dollars
33 (\$500) paid in connection with the repossession of a motor vehicle
34 to repossession agencies licensed pursuant to Chapter 11
35 (commencing with Section 7500) of Division 3 of the Business
36 and Professions Code provided that the licensee complies with
37 ~~Sections~~ *Section 22328 or 22328.5, as applicable*, and *Section*
38 *22329*, and actual fees paid to a licensee in conformity with
39 *Sections 26751 and 41612 of the Government Code* in an amount

1 not exceeding the amount specified in those sections of the
2 Government Code.

3 (g) Moneys paid to, and commissions and benefits received by,
4 a licensee for the sale of goods, services, or insurance, whether or
5 not the sale is in connection with a loan, that the buyer by a
6 separately signed authorization acknowledges is optional, if sale
7 of the goods, services, or insurance has been authorized pursuant
8 to Section 22154.

9 *SEC. 3. Section 22328 of the Financial Code is amended to*
10 *read:*

11 22328. (a) This section applies to a loan secured in whole or
12 in part by a lien on a motor vehicle as defined by subdivision (k)
13 of Section 2981 of the Civil Code, *except that it does not apply to*
14 *a title loan, as defined in Section 22328.5.*

15 (b) Any provision in any loan contract to the contrary
16 notwithstanding, at least 15 days' written notice of intent to dispose
17 of a repossessed or surrendered motor vehicle must be given to all
18 persons liable on the loan. The notice shall be personally served
19 or shall be sent by certified mail, return receipt requested, or
20 first-class mail, postage prepaid, directed to the last known address
21 of the persons liable on the loan. Except as otherwise provided in
22 Section 2983.8 of the Civil Code, those persons shall be liable for
23 any deficiency after disposition of the repossessed or surrendered
24 motor vehicle only if the notice prescribed by this section is given
25 within 60 days of repossession or surrender and does all of the
26 following:

27 (1) States that those persons shall have a right to redeem the
28 motor vehicle by paying in full the indebtedness evidenced by the
29 loan note until the expiration of 15 days from the date of giving
30 or mailing the notice, provides an itemization of the loan balance
31 and of any costs and fees authorized by this division, and states
32 the computation or estimate of the amount of any credit for
33 unearned finance charges or canceled insurance as of the date of
34 the notice.

35 (2) States either that there is a conditional right to reinstate the
36 loan until the expiration of 15 days from the date of giving or
37 mailing the notice and all the conditions precedent thereto or that
38 there is no right of reinstatement and provides a statement of
39 reasons therefor.

(3) States that, upon written request, the licensee shall extend for an additional 10 days the redemption period or, if entitled to the conditional right of reinstatement, both the redemption and reinstatement periods. The licensee shall provide the proper form for applying for these extensions with the substance of the form being limited to the extension request, spaces for the requesting party to sign and date the form, and instructions that it must be personally served or sent by certified or registered mail, return receipt requested, to a person or office and address designated by the licensee and received before the expiration of the initial redemption and reinstatement periods.

(4) Discloses the place at which the motor vehicle will be returned to the persons liable on the loan upon redemption or reinstatement.

(5) Designates the name and address of the person or office to whom payment shall be made.

(6) States the licensee's intent to dispose of the motor vehicle upon the expiration of 15 days from the date of giving or mailing the notice, or if by mail and either the place of deposit in the mail or the place of address is outside of this state, the period shall be 20 days instead of 15 days, and further, that upon written request to extend the redemption period and any applicable reinstatement period for 10 days, the licensee shall, without further notice, extend the period accordingly.

(7) Informs the persons liable on the loan that, upon written request, the licensee shall furnish a written accounting regarding the disposition of the motor vehicle as provided for in subdivision (c). The licensee shall advise them that the request must be personally served or sent by first-class mail, postage prepaid, or certified mail, return receipt requested, to a person or office and address designated by the licensee.

(8) Includes a notice, in at least 10-point bold type if the notice is printed, reading as follows:

“NOTICE: YOU MAY BE SUBJECT TO SUIT AND LIABILITY IF THE AMOUNT OBTAINED UPON DISPOSITION OF THE VEHICLE IS INSUFFICIENT TO PAY THE LOAN BALANCE AND ANY OTHER AMOUNTS DUE.”

(c) Unless automatically provided to the borrower within 45 days after the disposition of the motor vehicle, the licensee shall provide a written accounting regarding the disposition to any person liable on the loan within 45 days after their written request, if the request is made within one year after the disposition. The accounting shall itemize:

(1) The gross proceeds of the disposition.

(2) The reasonable and necessary costs and fees authorized by this division incurred in repossessing the motor vehicle.

(3) The satisfaction of indebtedness secured by any subordinate lien or encumbrance on the motor vehicle if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the licensee, the holder of a subordinate lien or encumbrance shall seasonably furnish reasonable proof of its interest, and unless it does so, the seller or holder need not comply with its demand.

(d) In all sales that result in a surplus, the licensee shall furnish an accounting as provided in subdivision (c) whether or not requested by the borrower. The surplus shall be returned to the borrower within 45 days after the sale is conducted.

SEC. 4. Section 22328.5 is added to the Financial Code, to read:

22328.5. (a) This section applies only to title loans. For purposes of this section, the following definitions apply:

(1) "Motor vehicle" has the same meaning as that term is defined in subdivision (k) of Section 2981 of the Civil Code.

(2) "Title loan" means a nonpurchase money loan where the lender obtains a security interest in a motor vehicle, which security interest is perfected by a first lien.

(b) Any provision in any loan contract to the contrary notwithstanding, at least 30 days' written notice of intent to dispose of a repossessed or surrendered motor vehicle shall be given to all persons liable on the loan. The notice shall be personally served or shall be sent by certified mail, return receipt requested, or first-class mail, postage prepaid, directed to the last known address of the persons liable on the loan and shall do all of the following:

(1) State that those persons shall have a right to redeem the motor vehicle by paying in full the indebtedness evidenced by the loan note until the expiration of 30 days from the date of giving or mailing the notice, provide an itemization of the loan balance

1 and of any costs and fees authorized by this division, and state the
2 computation or estimate of the amount of any credit for unearned
3 finance charges or canceled insurance as of the date of the notice.

4 (2) State either that there is a conditional right to reinstate the
5 loan until the expiration of 30 days from the date of giving or
6 mailing the notice and all the conditions precedent thereto or that
7 there is no right of reinstatement and provide a statement of
8 reasons therefor.

9 (3) State that, upon written request, the licensee shall extend
10 for an additional 10 days the redemption period or, if the loan is
11 subject to a conditional right of reinstatement, both the redemption
12 and reinstatement periods. The licensee shall provide the proper
13 form for applying for these extensions, with the substance of the
14 form being limited to the extension request, spaces for the
15 requesting party to sign and date the form, and instructions that
16 it must be personally served or sent by certified or registered mail,
17 return receipt requested, to a person or office and address
18 designated by the licensee and received before the expiration of
19 the initial redemption and reinstatement periods.

20 (4) Disclose the place at which the motor vehicle will be
21 returned to the persons liable on the loan upon redemption or
22 reinstatement.

23 (5) Designate the name and address of the person or office to
24 whom payment shall be made.

25 (6) State the licensee's intent to dispose of the motor vehicle
26 upon the expiration of 30 days from the date of giving or mailing
27 the notice, or if by mail and either the place of deposit in the mail
28 or the place of address is outside of this state, the period shall be
29 40 days instead of 30 days, and further, that upon written request
30 to extend the redemption period and any applicable reinstatement
31 period for 10 days, the licensee shall, without further notice, extend
32 the period accordingly.

33 (7) Inform the persons liable on the loan that, upon written
34 request, the licensee shall furnish a written accounting regarding
35 the disposition of the motor vehicle as provided for in subdivision
36 (c). The licensee shall advise them that the request must be
37 personally served or sent by first-class mail, postage prepaid, or
38 certified mail, return receipt requested, to a person or office and
39 address designated by the licensee.

1 (c) Unless automatically provided to the borrower within 45
2 days after the disposition of the motor vehicle, the licensee shall
3 provide a written accounting regarding the disposition to any
4 person liable on the loan within 45 days after his or her written
5 request, if the request is made within one year after the disposition.
6 The accounting shall itemize all of the following:

7 (1) The gross proceeds of the disposition.

8 (2) The reasonable and necessary costs and fees authorized by
9 this division incurred in repossessing the motor vehicle.

10 (3) The satisfaction of indebtedness secured by any subordinate
11 lien or encumbrance on the motor vehicle if written notification
12 of demand therefor is received before distribution of the proceeds
13 is completed. If requested by the licensee, the holder of a
14 subordinate lien or encumbrance shall seasonably furnish
15 reasonable proof of its interest, and unless it does so, the seller
16 or holder need not comply with its demand.

17 (d) In all sales that result in a surplus, the licensee shall furnish
18 an accounting as provided in subdivision (c) whether or not
19 requested by the borrower. The surplus shall be returned to the
20 borrower within 45 days after the sale is conducted.

21 SEC. 5. Section 22328.6 is added to the Financial Code, to
22 read:

23 22328.6. (a) A licensee shall not make a title loan unless the
24 licensee does all of the following:

25 (1) Provides the borrower with a written disclosure that includes
26 all of the following information:

27 (A) The interest rate, the annual percentage rate, and any fees
28 or other charges associated with the loan.

29 (B) The consequences for defaulting on the loan.

30 (C) A complete amortization schedule indicating the total cost
31 to the consumer over the life of the loan and samples of other term
32 options.

33 (D) A “High Interest Rate” disclosure. This disclosure shall be
34 in a separate box and shall be signed by the borrower and any
35 additional cosigner. The disclosure shall be in capital letters in
36 at least 16-point arial boldface type and shall read as follows:

37
38 “THIS IS A HIGH-COST LOAN. YOU MAY BE ABLE TO
39 OBTAIN A LOAN FROM ANOTHER SOURCE AT A LOWER

1 *RATE OF FINANCE CHARGE. THINK CAREFULLY BEFORE*
2 *YOU DECIDE TO ACCEPT THIS LOAN.”*

3

4 *(2) Ensures that the borrower has read and understood the*
5 *disclosure provided pursuant to paragraph (1).*

6 *(3) Underwrites the loan to determine the borrower’s ability*
7 *and willingness to repay the loan pursuant to the loan terms. A*
8 *licensee shall not make the loan if it determines through its*
9 *underwriting process that the borrower’s total monthly debt service*
10 *payments, at the time of origination, across all outstanding forms*
11 *of credit that can be independently verified by the licensee and*
12 *any other debt obligations reported by the borrower, including*
13 *the loan for which the borrower is being considered, exceed 50*
14 *percent of the borrower’s gross monthly income.*

15 *(A) For purposes of this paragraph, the licensee shall seek*
16 *information and documentation pertaining to all of the borrower’s*
17 *outstanding debt obligations during the loan application and*
18 *underwriting process, including loans that are self-reported by*
19 *the borrower but that the licensee is not able to independently*
20 *verify. The licensee shall verify this information using a credit*
21 *report from at least one major credit bureau or through other*
22 *available electronic debt verification services that provide reliable*
23 *evidence of a borrower’s outstanding debt obligations.*

24 *(B) A licensee shall request from the borrower information*
25 *regarding outstanding deferred deposit transactions and include*
26 *all information obtained from the borrower in the calculation of*
27 *the borrower’s outstanding debt obligations.*

28 *(C) For purposes of the debt-to-income ratio evaluation required*
29 *under this paragraph, a licensee shall not be required to consider*
30 *loans from friends or family to the borrower.*

31 *(D) A licensee shall also verify the borrower’s income that the*
32 *licensee relies on to determine the borrower’s debt-to-income ratio*
33 *using information from either of the following:*

34 *(i) Electronic means or services that provide reliable evidence*
35 *of the borrower’s actual income.*

36 *(ii) Internal Revenue Service Form W-2, tax returns, payroll*
37 *receipts, bank statements, or other third-party documents that*
38 *provide reasonably reliable evidence of the borrower’s actual*
39 *income.*

1 **(b) (1)** *A licensee shall not structure a title loan transaction as*
2 *if it were a sale-leaseback of the vehicle by the borrower to the*
3 *licensee.*

4 **(2)** *If a transaction appears to involve a consumer's sale of a*
5 *motor vehicle to another person and receipt of a lease of or license*
6 *to use the vehicle or like personal property, an option to repurchase*
7 *the vehicle, or both a lease of or license to use the vehicle or like*
8 *personal property and an option to purchase the vehicle, the*
9 *transaction shall be presumed to be a loan transaction in violation*
10 *of this subdivision. The presumption established by this paragraph*
11 *shall affect the burden of proof in a civil action only and may be*
12 *overcome by clear and convincing evidence to the contrary.*

13 **(3)** *Any waiver of this subdivision is void and unenforceable as*
14 *contrary to public policy.*

15 **(c)** *If a borrower defaults in the performance of any of the*
16 *borrower's obligations under a title loan contract and the licensee*
17 *disposes of the surrendered or repossessed vehicle, no deficiency*
18 *shall be owed or collected and no deficiency judgment shall be*
19 *requested or rendered to the licensee to recover any outstanding*
20 *balance owed by the borrower.*

21 **(d)** *If a borrower defaults in the performance of any of the*
22 *borrower's obligations under a title loan contract, the licensee*
23 *shall not make any negative report to any of the national credit*
24 *reporting agencies.*

25 **(e)** *Any advertisement or solicitation for a title loan that contains*
26 *a monthly interest rate shall also contain a corresponding annual*
27 *percentage rate pursuant to Regulation Z.*

28 **(f)** *A title loan contract shall not allow a licensee to impose a*
29 *prepayment penalty on the borrower.*

30 **(g)** *This section shall not be construed to affect the rights of a*
31 *bona fide purchaser for value who may acquire the purported*
32 *interest of the lender without notice of the facts constituting a*
33 *violation of this section.*

34 **(h) (1)** *A person may bring an action for the recovery of*
35 *damages, equitable relief, exemplary damages, and attorney's fees*
36 *and costs for any violation of this section.*

37 **(2)** *A person who violates this section shall be liable for a civil*
38 *penalty not to exceed ten thousand dollars (\$10,000) for each*
39 *violation, which shall be assessed and recovered in a civil action*
40 *brought in the name of the people of the State of California by the*

1 *Attorney General, a district attorney, or a city attorney in a court*
2 *of competent jurisdiction.*

3 *(3) An action for a violation of this section shall be commenced*
4 *within four years of the date on which the cause of action accrued.*

5 *(4) The rights, remedies, and penalties provided under this*
6 *subdivision are cumulative to each other and to the rights,*
7 *remedies, and penalties provided under any other applicable law.*

8 *(i) For purposes of this section, the following definitions apply:*

9 *(1) "Title loan" has the same meaning as that term is defined*
10 *in Section 22328.5.*

11 *(2) "Motor vehicle" has the same meaning as that term is*
12 *defined in subdivision (k) of Section 2981 of the Civil Code.*

13 *(3) "Regulation Z" has the same meaning as that term is defined*
14 *in subdivision (m) of Section 2981 of the Civil Code.*

15 *SEC. 6. No reimbursement is required by this act pursuant to*
16 *Section 6 of Article XIII B of the California Constitution because*
17 *the only costs that may be incurred by a local agency or school*
18 *district will be incurred because this act creates a new crime or*
19 *infraction, eliminates a crime or infraction, or changes the penalty*
20 *for a crime or infraction, within the meaning of Section 17556 of*
21 *the Government Code, or changes the definition of a crime within*
22 *the meaning of Section 6 of Article XIII B of the California*
23 *Constitution.*

24 ~~SECTION 1. Section 22343 is added to the Financial Code, to~~
25 ~~read:~~

26 ~~22343. No licensee shall take the title to a vehicle as security~~
27 ~~for any consumer loan unless the following requirements are~~
28 ~~satisfied:~~

29 ~~(a) The annual interest rate for the consumer loan is no greater~~
30 ~~than 36 percent.~~

31 ~~(b) The licensee provides the consumer with a disclosure that~~
32 ~~informs the consumer of the interest rate and any fees or other~~
33 ~~charges associated with the consumer loan, the consequences for~~
34 ~~defaulting on the consumer loan, and a complete amortization~~
35 ~~schedule indicating the total cost to the consumer over the life of~~
36 ~~the loan. The licensee shall ensure that the consumer has read and~~
37 ~~understood the disclosure.~~

38 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
39 ~~Section 6 of Article XIII B of the California Constitution because~~
40 ~~the only costs that may be incurred by a local agency or school~~

1 ~~district will be incurred because this act creates a new crime or~~
2 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
3 ~~for a crime or infraction, within the meaning of Section 17556 of~~
4 ~~the Government Code, or changes the definition of a crime within~~
5 ~~the meaning of Section 6 of Article XIII B of the California~~
6 ~~Constitution.~~

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